

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

AISHA DEVLIN,

Plaintiff,

Civil No. 08-13064

V.

DISTRICT JUDGE JULIAN ABLE COOK, JR.
MAGISTRATE JUDGE STEVEN D. PEPE

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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REPORT AND RECOMMENDATION

On July 16, 2008, Plaintiff filed a Complaint seeking federal court review of the Commissioner's decision to deny her Social Security disability benefits (Dkt. #1). This matter was referred to the undersigned on the same date of this filing (Dkt. #2). On November 25, 2008, Plaintiff filed a motion for an extension of time to serve Defendant (Dkt. #4). The Court granted this motion on December 3, 2008, and gave Plaintiff until December 19, 2008, to effectuate service (Dkt. #5). To date, nothing appears on the docket verifying that service has been completed. Accordingly, this Court issued a January 29, 2009, Order to Show Cause requiring Plaintiff to file with this Court on or before February 12, 2009, proof that he has served the Defendant with his Complaint and Summons (Dkt. #6).

On February 13, 2009, Plaintiff filed his Second Motion to Extend Time to Serve Defendant (Dkt. #7). In his motion, Plaintiff's attorney indicated he is understaffed, and the person who works on the Social Security files was out of the office until January 5, 2009. Plaintiff's counsel, therefore, asked for an additional 14 days to serve Defendant. Having reviewed Plaintiff's brief and finding sufficient cause for the relief requested therein, Plaintiff's

motion was granted (Dkt. #8). This Court ordered that on or before March 5, 2009, Plaintiff must serve Defendant **and also file with this Court proof that he has served the Defendant with his Complaint and Summons.** Plaintiff was warned that failure to comply with this Court's Order will result in the undersigned preparing a Report and Recommendation that Plaintiff's Complaint be dismissed.

Plaintiff's counsel did not comply with this Court's March 5, 2009, deadline. Therefore, a March 24, 2009, Order was issued again informing Plaintiff that he has failed to file with this Court proof that he has served the Defendant with his Complaint and Summons (Dkt. #9). Plaintiff was given one final opportunity to serve Defendant and also file with this Court proof of service on or before April 3, 2009. The March 24, 2009, Order also provided Plaintiff with the three addresses at which Defendant should be served. Plaintiff and his counsel were again warned that failure to comply with this Order will result in the undersigned preparing a Report and Recommendation that Plaintiff's Complaint be dismissed. Plaintiff's counsel was specifically warned that because such abandonment of a claimant's procedural rights would appear to be a violation of Plaintiff's counsel's obligations to his client under the State Bar of Michigan Rules of Professional Conduct 1.1(c), 1.2(a), and 1.3, this matter would be referred to the Attorney Grievance Commission of the State Bar of Michigan for further action if counsel failed to comply with this Court's Orders.

On April 9, 2009, Plaintiff filed her Third Motion To Allow More Time To Serve Defendant (Dkt. #10). Plaintiff's counsel claims in this filing that he attempted to serve

Defendants by certified mail with return receipt, but due to an “anomaly” service did not occur.¹ He therefore requested that this Court allow Plaintiff another 30 days to serve the Defendants. On April 10, 2009, the Court granted Plaintiff’s request and directed Plaintiff to serve Defendant and file proof of service with this Court on or before May 11, 2009. The undersigned warned that failure to comply with this Court’s third Order would result in the issuance of a Report and Recommendation that this case be dismissed.

As of this date, Plaintiff’s counsel has failed to comply with this Court’s February 24, 2009 (Dkt. #8), March 24, 2009 (Dkt. #9) or April 9, 2009, Orders (Dkt. #11) and file with this Court proof that he has properly served the Defendant at all three addresses (provided by the Court) with his Complaint and Summons. Accordingly, **IT IS RECOMMENDED** that this case be **DISMISSED** due to Plaintiff’s failure to prosecute in accordance with E.D. Mich. LR 41.2. The undersigned will also refer this matter to the Attorney Grievance Commission of the State Bar of Michigan for further action.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this

¹ Despite this Court’s March 24, 2009, Order (Dkt. #9) directing Plaintiff to serve the U.S. Attorney at his office in Detroit, Michigan, it appears that Plaintiff attempted to serve the U.S. Attorney in Bay City, Michigan (Dkt. #10, Ex. 1).

Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local, 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

Dated: July 22, 2009
Ann Arbor, MI

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing ***Report and Recommendation*** was served on the attorneys and/or parties of record by electronic means or U.S. Mail on July 22, 2009.

s/Deadrea Eldridge
Generalist Deputy Clerk